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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,473	12/17/2003	Hiromi Ito	38.002-AG	1472
29453	7590	05/03/2005	EXAMINER	
JUDGE PATENT FIRM RIVIERE SHUKUGAWA 3RD FL. 3-1 WAKAMATSU-CHO NISHINOMIYA-SHI, HYOGO, 662-0035 JAPAN			STASHICK, ANTHONY D	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/707,473

Applicant(s)

ITO, HIROMI

Examiner

Anthony Stashick

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>05172004</u> . | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Epstein 2,444,640 in view of McBarron 4,628,622 and FR 2,617,379 (FR '379). Epstein '640 discloses all the limitations substantially as claimed including the following: a sole 30, 34 defining a heel and lateral sides (see Figure 1); an upper 45, 17 defining a quarter, a collar and a vamp having a toe cap (see Figure 7); the upper being permanently attached along the heel area and one of the lateral sides of the sole (see Figure 1, reference number 45); the upper being unilaterally split between the quarter and vamp, from the collar to the other lateral side of the sole (see Figures 1 and 7); a zipper 19 provided in the area of the ball of the big toe, along the toe cap and reaching to where the split between the quarter and the vamp (see Figures 1 and 7); the zipper having a pull-tab (see Figure 8); the zipper provided horizontally along the sole from the position on the vamp in the area of the ball of the big toe, along the toe cap and reaching to where the quarter and vamp split (see Figure 1); the sole being thinner in the toe area than in the heel area (See Figure 1, heel is thicker than toe area). Epstein '640 does not teach a first hook-and-pile fastener provided on the pull-tab; second hook-and pile fastener complementary to the first hook-and-pile fastener, provided on the quarter, flanking the split; a pair of complementary second and third hook-and-pile fasteners, the second hook-and-pile fastener being provided on the quarter,

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flanking the split; the third hook-and-pile fastener being provided extending from the vamp, for overlying the second hook-and-pile fastener; the first and third hook-and-pile fasteners are fastenable to the second hook-and-pile fastener. FR '379 teaches that the pull-tab of a zipper located on a shoe can have a fastener located on it with the mating end of the fastener attached to the upper to prevent the zipper from unzipping during use. McBarron '622 teaches that hook-and-loop fasteners can be placed on the flaps flanking the zipper to hide the zipper and protect it from the elements. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to place hook-and-loop fasteners on the upper, as taught by McBarron '622, to help close and cover the zipper as well as to hold the pull-tab of the zipper, as taught by FR '379, to prevent accidental unzipping of the zipper during use.

3. Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied above in view of Rys-Sikora et al. 4,067,124. The references as applied above disclose all the limitations substantially as claimed except for the composition of the upper. Rys-Sikora et al. '124 teaches that the upper of a shoe can be made of polychloroprene rubber foam applied to a synthetic fabric (see col. 2, lines 57-65) to help prevent color loss of the fabric. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to make the upper out of synthetic fabric covered with polychloroprene rubber, as taught by Rys-Sikora et al. '124, to prevent the color of the upper from fading.

4. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-3 above in view of Polifroni 6,557,273 and Official Notice. The

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references as applied to claims 1-3 above disclose all the limitations substantially as claimed except for the composition of the insole. Polifroni '273 teaches that a shoe can have an insole placed within it to aid in making the shoe more comfortable for the user. Polifroni '273 also teaches that the insole can have a hard plastic core 12 with a sloping heel area (see Figure 2) with the insole being slightly thicker in the rearward area to give more support to the heel on impact. Official Notice is taken that sock liners, that are washable, are known to be used in shoes on top of the insole to help cover the insole and make it feel better to the user's foot and that these sock liners are washable. Therefore, it would have been obvious, to one of ordinary skill in the art, to place an insole, with a sock liner placed on top, such as that taught by Polifroni '273, to aid in cushioning the user's foot while absorbing the impact of the user's foot with the ground.

5. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being obvious over the references as applied to claims 1-3 above. The references as applied to claims 1-3 above disclose all the limitations of the claims except for the specifics of the water resistance of the a zipper. It appears that it would have been well within the skill of one of ordinary skill in the art to choose a zipper that could withstand all the weather changes that a shoe would go through in normal use. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to choose a zipper that would withstand snow, ice, rain and other inclement weather without letting the inclement weather penetrate the shoe through the zipper.

### ***Conclusion***

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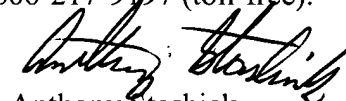
6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and are cited on form 892 enclosed herewith.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Stashick whose telephone number is 571-272-4561.

The examiner can normally be reached on Monday-Thursday 8:30 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Anthony Stashick  
Primary Examiner  
Art Unit 3728

ADS